

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.3814 of 2017

Meena

... Petitioner/1st Plaintiff

Vs

1 B.Ashok Kumar

2 B.Kamal

3 A.Suseela Kanwar

4 K.Hemalatha

... Respondents 1 to 4/3rd parties

5 S.Ramasamy & Co.
Rep. By its Partner
S.Balasubramaniam

6 S.Balasubramaniam

7 S.Sunderesan

8 S.Chelladurai

9 Anandavalli

10 The Chief Manager,
Indian bank, Assets Recovery
Management Branch,
Egmore, Chennai - 8.

11 The Senior Branch Manager,
Indian Bank, Vadapalani branch,
by its Senior Manager,
Chennai.

... Respondents 5 to11/Defendants 1 to 7

(The respondents 5 to 9 were given up by the revision petitioner vide endorsement in the petition)

This Civil Revision Petition is filed under section 115 of C.P.C. against the docket order dated 19.07.2016 made in C.M.P.No.943 of 2016 in A.S.SR.No.22515 of 2016 in O.S.No.10802 of 2009, on the file of the Principal Judge, City Civil Court, Chennai.

For Petitioner	: Mr.N.Rajan
Respondents 1 to 4	: M/s.Rank Associates
Respondent No.10 & 11	: Mr.V.Kalyanaraman
Respondents 5 to 9	: Given up

ORDER

According to the learned counsel for the petitioner, the respondents 1 to 4 have filed an application in C.M.P.No.943 of 2016 before the Principal District Judge, City Civil Court, Chennai seeking leave to file an appeal as third parties against the judgment and decree passed in a suit filed by the petitioner in O.S.No.10802 of 2009. The aforesaid application was allowed without providing an opportunity to the revision petitioner. Learned counsel for the respondent No.10 and 11 also submits that they were not given opportunities before allowing the application. In so far as the respondents 5 to 9 is concerned, they were given up by the counsel for the petitioner. The learned counsel for the respondents 1 to 4 would submit that the revision petitioner has filed a suit in O.S.No.10802 of 2009. In the aforesaid suit, they filed an application to implead the respondents 1 to 4 as parties in the suit. The said application was allowed. Subsequently, the petitioner has not taken

steps to amend the cause title. As the respondents 1 to 4 are auction purchaser, they are necessary parties in the suit. Therefore, challenging the judgment and decree passed in the aforesaid suit, the respondents 1 to 4 has filed an appeal along with the application to condone the delay. The application seeking leave to file an appeal was allowed. No prejudice would be caused to the revision petitioner in allowing the said application. The petitioner has challenged the order only on the ground that opportunity was not given to the petitioner.

2 Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 to 4 and the learned counsel for the respondent No.10 and 11 and perused the materials on record.

3 By taking into consideration of the submission made by the learned counsel for the petitioner and the statement made in the affidavit filed in support of the petition clearly shows that notice was not served on the petitioner. Therefore, the order passed by the Appellate Court in C.M.P.No.943 of 2016 is liable to be set aside.

4 In the facts and circumstances of the case and in the interest of justice, this Court is inclined to pass the following order:

D.KRISHNAKUMAR,J.
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(i) The order passed by the learned Principal District Judge, City Civil Court in C.M.P.No.943 of 2016 in A.S.S.R.No.22515 of 2016 is set aside.

(ii) C.M.P.No.943 of 2016 is remanded to the Appellate Court to dispose of the same on merit and in accordance with law after providing opportunities to the parties concerned.

(iii) The revision petitioner undertakes to file counter affidavit before the Appellate court in the said application within a period of two weeks from the date of receipt of copy of this order.

(iv) The Appellate Court is directed to dispose of the said application as expeditiously as possible preferably within a period of six weeks thereafter.

5 The Civil revision petition is disposed of with the above directions. No costs.

14.11.2017

Speaking/Non Speaking order

Index: Yes/No

Internet:Yes/No

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Note: Issue order copy on 20.11.2017

To

The Principal Judge, City Civil Court, Chennai.

C.R.P.(NPD) No.3814 of 2017



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